

A. 6

1 HIGHLY CONFIDENTIAL - A. COX
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

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5 In Re:

6 Chapter 11
7 LEHMAN BROTHERS Case No. 08-13555 (JMP)
8 HOLDINGS, INC., et al., (Jointly Administered)

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 Debtors.

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12 * * *HIGHLY CONFIDENTIAL* * *

13 DEPOSITION OF ARCHIBALD COX

14 New York, New York

15 September 11, 2009

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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 24300

<p style="text-align: right;">Page 2</p> <p>1 HIGHLY CONFIDENTIAL - A. COX 2 September 11, 2009 3 10:19 a.m.</p> <p>4 5 HIGHLY CONFIDENTIAL deposition 6 of ARCHIBALD COX, held at the law 7 offices of Jones Day, LLP, 222 East 8 41st Street, New York, New York, before 9 Kathy S. Klepfer, a Registered Professional 10 Reporter, Registered Merit Reporter, 11 Certified Realtime Reporter, Certified 12 Livenote Reporter, and Notary Public 13 of the State of New York.</p> <p>14 15 16 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 3</p> <p>1 HIGHLY CONFIDENTIAL - A. COX 2 3 A P P E A R A N C E S: 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: JAYANT W. TAMBE, ESQ. 9 BART GREEN, ESQ.</p> <p>10 11 BOIES, SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays and the Witness 13 575 Lexington Avenue - 7th Floor 14 New York, New York 10022 15 BY: JACK G. STERN, ESQ.</p> <p>16 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 4</p> <p>1 HIGHLY CONFIDENTIAL - A. COX 2 A P P E A R A N C E S: (Cont'd.) 3 JENNER & BLOCK, LLP 4 Attorneys for the Examiner 5 330 N. Wabash Avenue 6 Chicago, Illinois 60611-7603 7 BY: VINCENT LAZAR, ESQ.</p> <p>8 9 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 10 Attorneys for the Creditors Committee 11 51 Madison Avenue 12 22nd Floor 13 New York, New York 10010 14 BY: JAMES C. TECCE, ESQ.</p> <p>15 16 HUGHES, HUBBARD & REED, LLP 17 Attorneys for the SIPA Trustee 18 1775 I Street, N.W. 19 Washington, D.C. 20006-2401 20 BY: JOHN WOOD, ESQ. 21 FARA TABATABAI, ESQ. (Afternoon Session)</p> <p>22 23 Also Present: 24 PHILIP E. KRUSE, Alvarez & Marsal 25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 5</p> <p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p style="text-align: center; font-size: 2em; font-weight: bold;">REDACTED</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 REDACTED</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 (Exhibit 417B, a document bearing</p> <p>25 Bates Nos. BCI-EX-115898 through 115900,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 marked for identification, as of this date.)</p> <p>3 Q. I've handed you a three-page document</p> <p>4 marked 417B. Take moment to review all three</p> <p>5 pages. Let me know when you're done.</p> <p>6 (Document review.)</p> <p>7 A. All right.</p> <p>8 Q. There's various handwriting on all</p> <p>9 three pages. Some of the handwriting is yours,</p> <p>10 correct?</p> <p>11 A. Some of it is mine. On two of the</p> <p>12 pages, some of it's mine.</p> <p>13 Q. On the middle page the handwriting</p> <p>14 that appears, that's not your handwriting at</p> <p>15 all, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. So, putting aside that handwriting,</p> <p>18 which also shows up on the first page, the</p> <p>19 handwriting on the right-hand side of the page</p> <p>20 on the first page?</p> <p>21 A. Yes.</p> <p>22 Q. If you could help us understand what</p> <p>23 you have written there?</p> <p>24 A. I can read it to you.</p> <p>25 Q. Yes, if you could, and then I'll ask</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 you some follow-up questions about it.</p> <p>3 A. "We need these contracts. No one</p> <p>4 knows where the 800 million came from. The 200</p> <p>5 million is for more than 3,000 contracts.</p> <p>6 Mission critical." And then, "How big will this</p> <p>7 number be? 200 million estimated for more than</p> <p>8 3,000 contracts. Martin Kelly, Lehman</p> <p>9 Brothers."</p> <p>10 Q. And having read those notes, can you</p> <p>11 help us understand what those notes are</p> <p>12 referring to?</p> <p>13 A. They refer to the contracts that</p> <p>14 Lehman had that we might have to -- that we</p> <p>15 would either assume, or some of which we had --</p> <p>16 we hadn't decided which ones we were going to</p> <p>17 assume and what the cure payments might be for</p> <p>18 the contracts.</p> <p>19 Q. And the \$200 million figure, was that</p> <p>20 the cure figure for the 3,000 mission -- the</p> <p>21 greater than 3,000 mission critical contracts?</p> <p>22 A. I don't remember specifically, but</p> <p>23 I -- I believe that's what the number refers to.</p> <p>24 Q. And was that a number that was</p> <p>25 conveyed to you by Mr. Kelly during that week of</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 the 15th?</p> <p>3 A. I do not remember specifically.</p> <p>4 Q. Do you see the typewritten information</p> <p>5 on page 1 of Exhibit 417B has a line that reads,</p> <p>6 "Cure PMT," payment; do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. There's a \$2.25 billion number there?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any understanding where</p> <p>11 that \$2.25 billion number was derived from?</p> <p>12 A. I believe that was a number given to</p> <p>13 us by Lehman, their estimate of what the cure</p> <p>14 payments would be.</p> <p>15 Q. Did Barclays have its own estimate of</p> <p>16 what the cure payments would be?</p> <p>17 A. We couldn't. We didn't have time</p> <p>18 to -- we didn't have time to review all the</p> <p>19 contracts.</p> <p>20 Q. Was there someone on the negotiating</p> <p>21 team who was charged with trying to estimate</p> <p>22 that cure payment number for Barclays?</p> <p>23 A. Not specifically that I remember.</p> <p>24 Q. Do you know ultimately how much</p> <p>25 Barclays has paid in cure payments?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 A. I do not know.</p> <p>3 Q. There's a reference to the 800</p> <p>4 million, the \$800 million in your handwritten</p> <p>5 notes, do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what that's a reference</p> <p>8 to?</p> <p>9 A. No.</p> <p>10 Q. The typewritten version, the</p> <p>11 typewritten information that appears on this</p> <p>12 document, do you know what that is?</p> <p>13 A. That was, at that particular point in</p> <p>14 time that it was put together, was the -- was</p> <p>15 the list of assets and liabilities that Barclays</p> <p>16 would be assuming. Taking on, assuming, however</p> <p>17 you want to ...</p> <p>18 Q. In the "Assets" column, at the bottom</p> <p>19 of the "Assets" column, there's a typewritten</p> <p>20 entry, "80J, adjusted total assets, 72.65," do</p> <p>21 you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know how that number was</p> <p>24 derived?</p> <p>25 A. That's -- I guess that was the sum of</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 the total of the two items, two separate</p> <p>3 categories above.</p> <p>4 Q. Do you know whether that number</p> <p>5 reflected any markdown of asset values?</p> <p>6 A. I assume that that number reflected --</p> <p>7 I do not -- I assume that number reflected the</p> <p>8 marks that were agreed to between the two</p> <p>9 parties.</p> <p>10 Q. And that's the process you had</p> <p>11 referred to before?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know whether that number is the</p> <p>14 same number at which those assets were carried</p> <p>15 on Lehman's books on or about September 16,</p> <p>16 2008?</p> <p>17 A. I do not know exactly. I do not know</p> <p>18 what the difference was and I do not know,</p> <p>19 therefore, if it was the same number or not. I</p> <p>20 do know that some of their marks were higher</p> <p>21 than ours, some of their marks would have been</p> <p>22 lower than ours. I think there was a good faith</p> <p>23 agreement between the parties what the marks</p> <p>24 should be.</p> <p>25 Q. Do you know any of the individuals who</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 were involved in reaching that good faith</p> <p>3 agreement as to what the marks should be?</p> <p>4 A. I do not know -- well, I do not know</p> <p>5 specifically all the people who would have been</p> <p>6 involved because there would have been a large</p> <p>7 number of people involved given all the</p> <p>8 different categories of securities.</p> <p>9 Q. Do you know who would have led that</p> <p>10 effort from the Barclays side?</p> <p>11 A. Certainly Stephen King was involved</p> <p>12 and Michael -- I always get his name --</p> <p>13 MR. STERN: Keegan.</p> <p>14 A. Keegan was getting involved.</p> <p>15 I always say Keating. Keegan was</p> <p>16 involved.</p> <p>17 Q. Do you know any of the people involved</p> <p>18 on the Lehman side in that process?</p> <p>19 A. I'm going to go blank on a name again.</p> <p>20 Alex, their head of fixed income would</p> <p>21 have been involved.</p> <p>22 Q. Alex Kirk?</p> <p>23 A. Yeah, Alex Kirk would have been</p> <p>24 involved.</p> <p>25 Q. Do you have any --</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 A. And presumably a bunch of other people</p> <p>3 as well, because these are all different trading</p> <p>4 books.</p> <p>5 Q. Do you have any idea as to</p> <p>6 mechanically how the marking was done? Was it</p> <p>7 done cusip-by-cusip, was it done by asset</p> <p>8 category, or some other method?</p> <p>9 A. I do not know.</p> <p>10 Q. Continuing down --</p> <p>11 A. I will say in all of the marking and</p> <p>12 in all of the discussions between the parties on</p> <p>13 the assets and liabilities, there was always a</p> <p>14 really good faith effort to come up with numbers</p> <p>15 that were fair to both parties. That was the</p> <p>16 principle that we followed throughout the entire</p> <p>17 negotiation.</p> <p>18 Q. If you look at the handwritten notes</p> <p>19 that appear, you know, below the "Martin Kelly</p> <p>20 LEH" entry you have written the number 1.5 and</p> <p>21 then below that 1.35 bill, billion, number. I</p> <p>22 can't decipher the rest of that phrase. If you</p> <p>23 could just read that.</p> <p>24 A. Number Rich came up with may be</p> <p>25 questionable.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 Q. What's that a reference to?</p> <p>3 A. Both of the notes on this page or all</p> <p>4 the notes on this page relate to questions I had</p> <p>5 about the cure payment and the compensation</p> <p>6 liability pool that we were assuming, in that I</p> <p>7 wanted to make sure that we were not overstating</p> <p>8 or understating the numbers.</p> <p>9 The notes you have specifically</p> <p>10 referred to came about as a result of looking at</p> <p>11 the 2 billion accrual number that we had for the</p> <p>12 comp -- potential liability number that we had</p> <p>13 for the comp, compensation, and I do not -- my</p> <p>14 notes are not full. I do not remember exactly</p> <p>15 what the 1.35 billion was, whether that referred</p> <p>16 to just the U.S. entity or whether it referred</p> <p>17 to what they had accrued on their books so far</p> <p>18 for cash payments but excluding their</p> <p>19 compensation paid in stock.</p> <p>20 I do not remember. I think what I was</p> <p>21 satisfied with was that the 2 billion number was</p> <p>22 as accurate a number as we could come up with.</p> <p>23 Q. When you say "as accurate a number as</p> <p>24 you could come up with," was that \$2 billion</p> <p>25 number a number that Barclays was generating an</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 estimate of?</p> <p>3 A. No. No. No. Working with Lehman.</p> <p>4 Because obviously they had accrued numbers on</p> <p>5 their books. They had some facts we didn't</p> <p>6 have.</p> <p>7 Q. So your belief is that the \$2 billion</p> <p>8 number was the number accrued on Lehman's books?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 A. I did not say that.</p> <p>11 Q. That's what I'm trying to understand.</p> <p>12 A. That's not what I said. I said</p> <p>13 they -- we had to do it with them. They had</p> <p>14 some numbers that were accrued on their books.</p> <p>15 They had -- they knew what they were going --</p> <p>16 they knew what approximately their liability</p> <p>17 would be for the year that they thought they had</p> <p>18 to pay. We obviously had to be working with</p> <p>19 Lehman to come up with a number that was arrived</p> <p>20 at.</p> <p>21 Q. Do you know whether 2 billion was the</p> <p>22 number that Lehman had accrued on its books?</p> <p>23 A. Well, first of all, I don't believe</p> <p>24 that it was because the 2 billion number applied</p> <p>25 to a year and they would only have accrued for</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 through the end of August, so for only for</p> <p>3 two-thirds of the year.</p> <p>4 So it's highly unlikely that they</p> <p>5 would have had a full year's accrual in eight</p> <p>6 months given the environment in which we were</p> <p>7 operating. Secondly, I don't know that they</p> <p>8 accrued for the stock portion of their</p> <p>9 compensation. They may have only been accruing</p> <p>10 for the cash portion of their compensation.</p> <p>11 So I would think it highly unlikely</p> <p>12 that the 2 billion number was accrued on their</p> <p>13 books at that time.</p> <p>14 Q. Did you ever see any calculations from</p> <p>15 Lehman of their accruals?</p> <p>16 A. Did I ever see their actual books and</p> <p>17 records that showed that number?</p> <p>18 Q. Yes.</p> <p>19 A. No. What their accrual was, no.</p> <p>20 Q. The 1.35 billion number Rich came up</p> <p>21 with, what's that a reference to?</p> <p>22 A. Rich Ricci had -- the 1.35 billion is</p> <p>23 the number that Rich gave me.</p> <p>24 Q. You said "may be questionable." Is</p> <p>25 that Rich's number that will be questionable or</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 the \$2 billion number would be questionable?</p> <p>3 A. The 1.35 billion.</p> <p>4 Q. Did you ask Rich Ricci questions about</p> <p>5 how he came up with that number?</p> <p>6 A. Yes. We asked -- we asked a lot of</p> <p>7 questions about this. That's why I say when we</p> <p>8 ended up with the \$2 billion number, that was</p> <p>9 the number that we felt was the correct number.</p> <p>10 Q. Do you know the amount of the comp</p> <p>11 payments that Barclays has made under the</p> <p>12 contract, under the Asset Purchase Agreement?</p> <p>13 A. I don't know the exact number, but my</p> <p>14 understanding is it's somewhere in that area of</p> <p>15 2 billion.</p> <p>16 Q. How do you have that understanding?</p> <p>17 A. From what I've been told.</p> <p>18 Q. By counsel?</p> <p>19 A. No. Internally.</p> <p>20 Q. By whom?</p> <p>21 A. I don't recall.</p> <p>22 Q. If you look at the last page of this</p> <p>23 exhibit, 417B, I believe that's your handwriting</p> <p>24 on the right-hand side, correct?</p> <p>25 A. I think we've covered that.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 62</p> <p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 Q. So next to the word "cure payment" in</p> <p>3 the amount 2.25, you have written, "How big will</p> <p>4 this number be? Is Lehman expecting this?</p> <p>5 Creditors." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. What's your reference to creditors</p> <p>8 there?</p> <p>9 A. It's are the creditors expecting a</p> <p>10 number this big.</p> <p>11 Q. Are these questions that you posed to</p> <p>12 Lehman?</p> <p>13 A. They're questions that I asked of</p> <p>14 myself. I would -- I do not remember</p> <p>15 specifically asking people, others, but logical</p> <p>16 to assume I did.</p> <p style="text-align: center;">REDACTED</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 63</p> <p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p style="text-align: center;">REDACTED</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 64</p> <p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p style="text-align: center;">REDACTED</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 65</p> <p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p style="text-align: center;">REDACTED</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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<p style="text-align: right;">Page 102</p> <p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p style="text-align: center;">REDACTED</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 103</p> <p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p style="text-align: center;">REDACTED</p> <p>10 (Time Noted: 1:34 P.M.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 <u>ARCHIBALD COX</u></p> <p>19</p> <p>20 Subscribed and sworn to</p> <p>21 before me this day</p> <p>22 of 2009.</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 104</p> <p>1 HIGHLY CONFIDENTIAL - A. COX</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4 : ss</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, Kathy S. Klepfer, a Registered</p> <p>7 Merit Reporter and Notary Public within and</p> <p>8 for the State of New York, do hereby</p> <p>9 certify:</p> <p>10 That ARCHIBALD COX, the witness whose</p> <p>11 deposition is herein before set forth, was</p> <p>12 duly sworn by me and that such deposition is</p> <p>13 a true record of the testimony given by such</p> <p>14 witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this action</p> <p>17 by blood or marriage and that I am in no way</p> <p>18 interested in the outcome of this matter.</p> <p>19 I further certify that neither the</p> <p>20 deponent nor a party requested a review of</p> <p>21 the transcript pursuant to Federal Rule of</p> <p>22 Civil Procedure 30(e) before the deposition</p> <p>23 was completed.</p> <p>24 In witness whereof, I have hereunto</p> <p>25 set my hand this 11th day of September,</p> <p> 2009.</p> <p> -----</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	

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<div>1 HIGHLY CONFIDENTIAL - A. COX</div> <div>2 INDEX (Cont'd.)</div> <div>3 EXHIBITS: PAGE</div> <div>4 Exhibit 422B, a document bearing Bates Nos. 92</div> <div>5 BCI-EX-81116</div> <div>6 Exhibit 423B, a transcript from the United 94</div> <div>7 States Bankruptcy Court on September 19, 2008</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>TSG Reporting - Worldwide (877) 702-9580</div>	<div>1 HIGHLY CONFIDENTIAL - A. COX</div> <div>2 NAME OF CASE: In re Lehman Brothers Holdings, Inc.</div> <div>3 DATE OF DEPOSITION: September 11, 2009</div> <div>4 NAME OF WITNESS: Archibald Cox</div> <div>5 Reason Codes:</div> <div>6 1. To clarify the record.</div> <div>7 2. To conform to the facts.</div> <div>8 3. To correct transcription errors.</div> <div>9 Page _____ Line _____ Reason _____</div> <div>10 From _____ to _____</div> <div>11 Page _____ Line _____ Reason _____</div> <div>12 From _____ to _____</div> <div>13 Page _____ Line _____ Reason _____</div> <div>14 From _____ to _____</div> <div>15 Page _____ Line _____ Reason _____</div> <div>16 From _____ to _____</div> <div>17 Page _____ Line _____ Reason _____</div> <div>18 From _____ to _____</div> <div>19 Page _____ Line _____ Reason _____</div> <div>20 From _____ to _____</div> <div>21 Page _____ Line _____ Reason _____</div> <div>22 From _____ to _____</div> <div>23 Page _____ Line _____ Reason _____</div> <div>24 From _____ to _____</div> <div>25 _____</div> <div>TSG Reporting - Worldwide (877) 702-9580</div>